

Title 18. State Board of Equalization

NOTICE IS HEREBY GIVEN

The State Board of Equalization (the Board), pursuant to the authority vested in it by sections 7372, 8251, 60063, and 60601 of the Revenue and Taxation Code, proposes to adopt Regulation 1125, Two-Party Exchange, in Title 18, Division 2, Chapter 1, and Regulation 1423, Two-Party Exchange, in Title 18, Division 2, Chapter 3, of the California Code of Regulations, relating to Two-Party Exchange, and to amend existing Regulation 1123, Supplier, in Title 18, Division 2, Chapter 1, of the California Code of Regulations, and existing Regulation 1420, Supplier, in Title 18, Division 2, Chapter 3, of the California Code of Regulations. A public hearing on the proposed regulatory action will be held in Room 121, 450 N Street, Sacramento, at 1:30 p.m., or as soon thereafter as the matter may be heard, on Tuesday, June 27, 2006. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by the time of the public hearing.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current law provides that primary liability for motor vehicle fuel tax under the Motor Vehicle Fuel Tax Law and primary liability for diesel fuel tax under the Diesel Fuel Tax Law is imposed on, among others, the position holder in a terminal and the refiner, on removal of motor vehicle fuel or diesel fuel from the terminal or refinery, if the fuel is removed at the rack. The Motor Vehicle Fuel Tax Law and the Diesel Fuel Tax Law contain provisions, in sections 7372, subdivision (b) and 60063, subdivision (b), respectively, that permit the Board to relieve the position holder or refiner from primary liability for payment of the motor vehicle fuel or diesel fuel tax imposed on them and to hold another person primarily liable for the tax, under certain conditions. The Board is permitted to adopt regulations it deems appropriate in order to implement this provision.

Regulation 1125, Two-Party Exchange, and Regulation 1423, Two-Party Exchange, are proposed to be promulgated to implement section 7372 of the Motor Vehicle Fuel Tax Law and section 60063 of the Diesel Fuel Tax Law, respectively. The regulations are proposed to provide a general description of a two-party exchange and the reasons for a two-party exchange, to define a two-party exchange, delivering supplier, and receiving supplier, to explain the conditions that must be met in order to relieve the delivering supplier of the fuel tax liability, and to explain the reporting requirements of the terminal operator, delivering supplier, and receiving supplier.

The amendments to Regulation 1123, Supplier, and Regulation 1420, Supplier, are proposed to clarify that the delivering supplier, either the position holder or the refiner, under a two-party exchange remains primarily liable for the tax due on removal of motor vehicle fuel or diesel fuel from the terminal or refinery rack if the requirements for a two-party exchange pursuant to Regulation 1125 and Regulation 1423, respectively, are not met.

COST OR SAVINGS TO STATE OR LOCAL AGENCIES OR SCHOOL DISTRICTS

The Board has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed regulatory

action will result in no direct or indirect cost or savings to any state agency, or any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code, or other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5(a)(8), the Board makes an initial determination that the adoption of proposed Regulations 1125 and 1423 and proposed amendments to Regulations 1123 and 1420 will have no significant statewide adverse economic impact directly affecting business.

The adoption of the proposed regulations and proposed amendments will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, nor create or expand business in the State of California.

The regulations and amendments as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulations may affect small business.

COST IMPACT ON PRIVATE PERSON OR BUSINESSES

There will be no adverse economic impact on private businesses or persons because the proposed regulatory action implements existing statutory provisions and does not impose any additional compliance or reporting requirements on private persons or businesses.

SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

FEDERAL REGULATIONS

Proposed Regulations 1125 and 1423 and Regulations 1123 and 1420 have no comparable federal regulations.

AUTHORITY

Sections 7372, 8251, 60063, and 60601 of the Revenue and Taxation Code.

REFERENCE

Sections 7372 and 60063 of the Revenue and Taxation Code.

CONTACT

Questions regarding the substance of the proposed regulation should be directed to Ms. Carolee Johnstone, (916) 323-7713, email Carolee.Johnstone@boe.ca.gov, or by mail to State Board of Equalization, Attn: Carolee Johnstone, MIC:82, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail Diane.Olson@boe.ca.gov or by mail at State Board of Equalization, Attn: Diane Olson, MIC: 80, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

ALTERNATIVES CONSIDERED

The Board must determine that no alternative it considered or that has otherwise been brought to its attention would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared a statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulations and amendments are available on the internet at the Board's website <http://www.boe.ca.gov>.

ADDITIONAL COMMENTS

Following the hearing, the Board may, in accordance with law, adopt the proposed regulations and amendments if the text remains substantially the same as described in the text originally made available to the public. If the Board makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulations and amendments. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Ms. Olson. The Board will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

STATE BOARD OF EQUALIZATION

Gary Evans, Acting Chief
Board Proceedings Division